

November, 07

Chris Nelson

INITIATIVE PETITION

SOUTH DAKOTA OPEN AND CLEAN GOVERNMENT ACT

RECEIVED

NOV 19 2007

S.D. SEC. OF STATE

WHEREAS, the undersigned qualified voters of the state of South Dakota, petition that the following proposed law be submitted to the voters of the state of South Dakota at the general election on November 4, 2008 for their approval or rejection pursuant to the Constitution of the State of South Dakota.

The substance of the proposed amendment is as follows:

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA.

Section 1. That §12-27-21 be amended to read as follows:

No public body, public officer, person in the employ of the state or any of its political subdivisions, or candidate for public office may, directly or indirectly, direct, permit, receive, require, or facilitate the use of tax revenues or any other public resources for campaign, lobbying, or partisan purposes, including payment of dues or membership fees of any kind to any person, league, or association which, directly or indirectly, engages in lobbying, campaigns, or partisan activity. No candidate, political committee, or political party may accept any contribution from any state, state agency, political subdivision of the state, foreign government, Indian tribe, federal agency, or the federal government. A violation of this section is a Class 1 misdemeanor.

Section 2. Any person who knowingly spends or receives funds in violation of §12-27-21 shall pay full restitution for the greater of the public cost or for the market value of any misappropriated resources. A knowing violation of §12-27-21 is grounds for discharge of an employee. A knowing violation of §12-27-21 is deemed corrupt misconduct.

Section 3. The provisions of §12-27-21 do not limit public officials in the performance of their constitutional duties, and do not apply to:

- (1) Communications among and between a member and a staff member of a legislative body, or between an elected or appointed public officer and a legislator or a legislative staff member;
(2) Comments by an elected official or communications from an elected official that are designated for constituents;
(3) Appearances and communications by a public officer or employee, pursuant to a request to appear before a public body to provide information;
(4) A public employee acting in an uncompensated personal capacity, undirected in any manner by, and who does not purport to represent the interests of, a public employer; and
(5) An authorized employee of the office of the Supreme Court, Governor, lieutenant governor, attorney general, secretary of state, auditor, treasurer, and commissioner of school and public lands, and other principal departments of the executive department of government having responsibility to assess the impact of proposals which affect the administration of government.

Section 4. Terms as used in §12-27-21 mean:

- (1) "Direct, permit, receive, require, or facilitate the use of tax revenues or any other public resources for campaign, lobbying, or partisan purposes," includes
(a) The use of public funds, facilities, rights of access, equipment, supplies, or trademarks to influence any election;
(b) Undertaking, promoting, or distributing studies, surveys, analyses, descriptions, or other communications using public resources in a manner specifically calculated to induce support of, or opposition to, proposed legislation or ballot questions; and
(c) Incurring any public administrative expenses or activities to allocate or designate portions of public employee income to entities that engage in lobbying or partisan activities, other than charitable organizations qualified as exempt from federal income tax under section 501(c)3 of the Internal Revenue Code, or the corresponding section of any future federal tax code;

(2) "Campaign," includes

- (a) Communications or expenditures related to the pursuit of an elected or appointed public office;
(b) All lobbying; and
(c) Efforts paid in whole or in part by public revenues or resources to coordinate or induce members of the general public or any segment thereof to directly influence legislative activity by communicating with members of any legislative body supporting or opposing legislation within this state, or supporting or opposing a petition drive or ballot question;

(3) "Lobbying," includes attempts to directly influence legislative activity by communication with any member or employee of any legislative body or with any government official or employee who may participate in the formulation of legislation of this state;

(4) "Person," includes any natural person, business entity, organization, committee, political party, campaign fund, and association;

(5) "Public officer" and "person in the employ of the state or any of its political subdivisions," include any person who is elected, appointed, or employed by this state or any political subdivision of this state, including any person who is an independent contractor or consultant hired by the state or a political subdivision of this state; and

(6) "Tax revenues or other public resources," includes all state and local government revenues and resources, and does not include any revenues paid or resources provided by the United States government.

Section 5. No person may enter into a government contract if the person also employs, hires, or retains the services of a current or former legislator or legislative staff member who is less than one year removed from such public position. A person who knowingly violates this prohibition is guilty of a misdemeanor and shall, in addition to other penalties, forfeit any contractual rights to any payment or reimbursement, and shall make restitution to the state in the amount of funds accrued during the period of violation. This section shall not apply to a bona fide position, trade, occupation, or profession in which a person engaged or obtained certification within one year prior to becoming a legislator or legislative staff member.

Section 6. Beginning on the date a government contract is awarded and extending until two years following the conclusion of that contract, no holder of the public office with ultimate responsibility for the award of the contract, no candidate for that office, and no person acting on behalf of either, may knowingly solicit, accept, or direct a contribution from the holder of the government contract or an immediate family member of the holder. No candidate or other person may knowingly accept or make a contribution that is solicited or directed in violation of this section. A person who knowingly violates this prohibition is guilty of a misdemeanor and shall, in addition to other penalties, make full restitution to the donor. A knowing violation of this section is deemed corrupt misconduct.

Section 7. Any person entering into a no-bid government contract awarded by the state or any of its subdivisions shall be considered a holder of the government contract and shall contractually agree to cease making, inducing, or soliciting any contribution or independent expenditure, directly or indirectly, through any officer, employee, immediate family member of any officer or employee, vendor, or agent, to or for the benefit of any candidate for any elected office of the state or any of its political subdivisions, or to any person who intends to make such a contribution within the state or any of its political subdivisions, for the duration of the contract and two years thereafter. The contractual

agreement shall provide that any violation of this provision by the holder of the government contract shall, in addition to other legal consequences, result in forfeiture of any contractual rights to payment under the contract, and in payment of restitution to the state in an amount of not less than twice the amount of the contribution. Any person who knowingly violates this provision, or accepts contributions on behalf of a candidate or other entity in violation of this provision, shall pay restitution to the state in an amount not less than twice the amount of the contribution. If the treasurer of any entity subject to such agreement obtains knowledge of a contribution made or accepted in violation thereof by that entity, then liability for the violation shall be also attributable to the treasurer unless the treasurer notifies the secretary of state about the violation in writing within three business days of learning of such contribution. A knowing violation of this section is deemed corrupt misconduct. If a person has previously been determined to be responsible for violating this section, the person shall be ineligible to hold any government contract, or public employment with the state or any of its political subdivisions, for three years. The Governor may temporarily suspend any debarment under this section during a declared state of emergency.

Section 8. In addition to other actions, penalties and remedies provided by state law, a violation of section 7 of this Act may be established and enforced by the filing of a verified complaint in the circuit court. The court may appoint a referee to take testimony and make findings and recommendations. The complaint may be filed in the name of the state by the attorney general. The complaint may also be filed by a private citizen, or non-governmental group or entity, only if the complaining party has first presented to the attorney general a request to file a complaint, along with a sworn affidavit setting forth supporting facts, and the attorney general has failed to file a complaint within fifteen days from receipt of the request. If a complaint is filed in the circuit court by a private citizen, or a non-governmental group or entity, then the attorney general may intervene and prosecute the complaint. The following provisions shall control a complaint to establish a violation of and to enforce section 7 of this Act:

- (1) Within twenty-one days from the filing of a verified complaint, the court shall, sua sponte, make a determination based on the verified complaint whether there is probable cause that a violation has occurred;
- (2) If the court determines that there is not probable cause that a violation has occurred then the complaint shall be dismissed without further proceedings; and
- (3) In the event the complaint is dismissed for lack of probable cause then the court may award costs and attorney fees against the complaining party, other than the state.

Section 9. The secretary of state shall promptly publish a summary of each government contract on a searchable website accessible from a conspicuous place on its official public website, for a period of at least ten years. Any holder of a government contract shall promptly prepare and deliver to the secretary of state a true and correct "Government

Contract Summary," in digital format as prescribed by that office, which shall identify the names and addresses of the holders and all other parties to the government contract, briefly describe the nature of the contract and goods or services performed, disclose whether it is or is not a no-bid government contract, disclose the estimated duration and end date of the contract, and disclose the contract's estimated amount, and apportioned sources of payment. The summary shall also disclose any other relevant contract information as determined by the secretary of state, to the extent disclosure would not violate federal law, trade secrets, or intellectual property rights.

Section 10. Terms as used in sections 5 to 9 of this Act, inclusive, mean:

- (1) "Contribution," includes money, monetary donations, loans, and any in-kind donations, but does not apply to volunteer activities by individuals that do not otherwise qualify as an in-kind donation;
- (2) "Government contract," includes any contract awarded by an agency or department of this state or any public body receiving state subsidy or authorized to levy taxes, for the purchase of goods or services for amounts greater than five hundred dollars, indexed for inflation per the Consumer Price Index after the year 2010. A contract for services includes collective bargaining agreements with a labor organization representing employees but not employment contracts with individual employees;
- (3) "Holder of the government contract," includes any party to the contract, including partners, owners of five percent or more interest, officers, administrators or trustees of any person who is a party to the contract, or, in the case of collective bargaining agreements, the labor organization and any political committees created or controlled by the labor organization;
- (4) "Holder of the public office with ultimate responsibility for the award of the contract," includes any elected official who may award the contract or appoint an official responsible for awarding the contract, or any elected official of a public body where the contract is awarded by that public body;
- (5) "Immediate family member," includes any spouse, child, spouse's child, son-in-law, daughter-in-law, parent, sibling, grandparent, grandchild, stepbrother, stepsister, stepparent, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, guardian, and domestic partner;
- (6) "No-bid government contract," includes all government contracts that do not use open, blind competitive bidding processes for procurement. Collective bargaining agreements qualify as no-bid government contracts if the contract confers an exclusive representative status to bind all employees to accept the terms and conditions of the contract; and
- (7) "Person," includes any natural person, business entity, organization, committee, political party, campaign fund, and association.

INSTRUCTIONS TO SIGNERS:

1. Signers of this petition must individually sign their names in the form in which they are registered to vote or as they usually sign their names.
2. Before the petition is filed, each signer or the circulator must add the residence address of the signer and the date of signing. If the signer is a resident of a second or third class municipality, a post office box may be used for the residence address.
3. Before the petition is filed, each signer or the circulator must print the name of the signer in the space provided and add the county of voter registration.
4. Abbreviations of common usage may be used. Ditto marks may not be used.
5. Failure to provide all information requested may invalidate the signature.

NAME		RESIDENCE	DATE/COUNTY
SIGN		STREET AND NUMBER OR RURAL AND BOX NO.	DATE OF SIGNING
1 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL AND BOX NO.	DATE OF SIGNING
2 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL AND BOX NO.	DATE OF SIGNING
3 PRINT	Tonchi Weaver 1306 38 th Street Rapid City, SD 57702	Jessica Walberg 1714 S. 10 th Avenue Sioux Falls, SD 57105	James Anderson 1909 S. Covell Ave. Sioux Falls, SD 57105
SIGN			REGISTRATION
4 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL AND BOX NO.	DATE OF SIGNING
5 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL AND BOX NO.	DATE OF SIGNING
6 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL AND BOX NO.	DATE OF SIGNING
7 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
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12 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION
SIGN		STREET AND NUMBER OR RURAL AND BOX NO.	DATE OF SIGNING
13 PRINT		CITY OR TOWN	COUNTY OF REGISTRATION

NAME	RESIDENCE	DATE/COUNTY
SIGN 14 PRINT	STREET AND NUMBER OR RURAL AND BOX NO. CITY OR TOWN	DATE OF SIGNING COUNTY OF REGISTRATION
SIGN 15 PRINT	STREET AND NUMBER OR RURAL AND BOX NO. CITY OR TOWN	DATE OF SIGNING COUNTY OF REGISTRATION
SIGN 16 PRINT	STREET AND NUMBER OR RURAL AND BOX NO. CITY OR TOWN	DATE OF SIGNING COUNTY OF REGISTRATION
SIGN 17 PRINT	STREET AND NUMBER OR RURAL AND BOX NO. CITY OR TOWN	DATE OF SIGNING COUNTY OF REGISTRATION
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SIGN 22 PRINT	STREET AND NUMBER OR RURAL AND BOX NO. CITY OR TOWN	DATE OF SIGNING COUNTY OF REGISTRATION
SIGN 23 PRINT	STREET AND NUMBER OR RURAL AND BOX NO. CITY OR TOWN	DATE OF SIGNING COUNTY OF REGISTRATION

VERIFICATION BY PERSON CIRCULATING PETITION

INSTRUCTIONS TO CIRCULATOR: This section **must** be completed following circulation and before filing.

Print name of the circulator _____ Residence Address _____ City _____ State _____

I, under oath, state that I circulated the above petition, that each signer personally signed this petition in my presence, that I made reasonable inquiry and to the best of my knowledge each person signing the petition is a qualified voter in the county indicated on the signature line, that no state statute regarding petition circulation was knowingly violated, and that either the signer or I added the printed name, the residence address of the signer, the date of signing, and the county of voter registration.

Sworn to before me this _____ day of _____, _____.

(Seal)

Signature of Circulator

Signature of Officer Administering Oath

Title of Officer Administering Oath

My Commission Expires _____